

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8754 of 2003,

SPECIAL CIVIL APPLILCATION No 14016 of 2003

and

SPECIAL CIVIL APPLICATION No 7350 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMSHRAY RAMSUKH VERMA

Versus

RELIANCE INDUSTRIES LTD.

Appearance:

1. Special Civil Application No. 8754 of 2003
MR NR SHAHANI for Petitioner No. 1
MR AK CLERK for Respondent No. 1
2. Special Civil Application No. 14016 of 2003
MR AK Clerk for the petitioner.
MR GM JOSHI for the respondent.
3. Special Civil Application No.7350 of 2004
MS SEJAL SUTARIA for MR VH DESAI for the petitioner.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/08/2004

CAV JUDGEMENT

1. Though there are certain factual differences in these three petitions, issue of law involved in all these petitions being common, these petitions are being disposed of by a common judgment.

2. Some of the leading facts in each of the petitions can be noted, at the outset.

3.1 In Special Civil Application No.8754 of 2003, it is the case of the petitioner that he was working as jobber with the respondent since 1.8.69. In the year 1987, there was certain agitations in the respondent Company and the petitioner and other employees were alleged to have led and participated in a strike. On account of all these allegations, a departmental inquiry was conducted against the petitioner and by order dated 26.11.92 the petitioner came to be removed from service. There was certain side litigation which is not relevant for the purpose of deciding the present petition. The said action of the Management of removing the petitioner from service came to be challenged by him before the Labour Court by filing T.Application No.257/93. The Labour Court, Ahmedabad, by its order dated 12.3.2001 was pleased to decide the question of legality of the departmental inquiry conducted by the respondent against the petitioner as a preliminary issue. By the said order dated 12.3.01, the Labour Court was pleased to come to the conclusion that the respondent had breached the principles of natural justice in conducting the departmental inquiry against the petitioner.

3.2. Being aggrieved by the said order dated 12.3.01 passed by the Labour Court, Ahmedabad, the respondent herein preferred Revision Application (IC) No.16/01 before the Industrial Court, Ahmedabad. The Industrial Court, Ahmedabad by its order dated 6.12.01 was pleased to allow the revision application filed by the respondent and set aside the order dated 12.3.01 passed by the Labour Court and was pleased to uphold the validity of the departmental inquiry conducted against the petitioner.

3.3. It is this order dated 6.12.01 passed by the

Industrial Court, Ahmedabad that the petitioner has challenged in the present petition.

3.4. Learned advocate Shri N.R.Shahani appearing for the petitioner has assailed the said order dated 6.12.01 passed by the Industrial Court, Ahmedabad and contended that the Industrial Court ought not to have interfered with the order passed by the Labour Court dated 12.3.01. He has contended that the strike has already been held to be illegal and if the finding of the Industrial Court to the effect that the departmental inquiry conducted by the respondent is valid is allowed to be sustained, the petitioner-workman would have virtually no defence left in the main proceedings which are pending before the Labour Court and that therefore according to the contention of the learned advocate Shri Shahani, the order of the Industrial Court is not interlocutory in nature but completely and conclusively decides the issues against the petitioner. He, therefore, urges this Court to interfere with the order of the Industrial Court. Alternatively, he submits that even the issue decided by the Labour Court in its order dated 12.3.01 with respect to the validity of the departmental inquiry was at the interlocutory stage and that therefore, the Industrial Court also should not have entertained the revision application since the Industrial Court would not have been justified in interfering with the order of the Labour Court at an interlocutory stage. He further contends that the Industrial Court erred in exercising the powers of revision under section 85 of the Bombay Industrial Relations Act. According to the learned advocate Shri Shahani, the powers of revision could not have been exercised by the Industrial Court for setting aside the findings arrived at by the Labour Court.

3.5. Learned advocate Shri Shahani has placed reliance on the decision reported in AIR 1984 SC 153 (D.P.Maheshwari v. Delhi Admn. & others) in which it is observed that Articles 226 and 136 of the Constitution of India cannot be allowed to be used to break the resistance of the workmen. Learned advocate Shri Shahani has also placed reliance on the decision reported in (1996) 3 SCC 206 (National Council for Cement & Building Materials v. State of Haryana) in support of his contention that in the guise of deciding preliminary issue, adjudication of the dispute should not be permitted to be delayed.

3.6. Appearing for the respondent, learned advocate Shri A.K.Clerk has sought to support the impugned order dated 6.12.2001 passed by the Industrial Court. He

submits that the issue decided by the Industrial Court is that of legality of the departmental inquiry and the same being a preliminary issue decided at an interlocutory stage, this Court in exercise of powers under Articles 226 and 227 of the Constitution of India would not interfere with the same. He has further submitted that even though the Industrial Court in the Revision Application filed by the respondent was also considering the issue at an interlocutory stage, interference by this Court in the present petition would not justify to correct the said error in exercise of power under Articles 226 and 227 of the Constitution of India.

3.7. In support of his contention, learned advocate for the respondent Shri Clerk has relied upon a decision reported in AIR 1975 SC 1900 (Cooper Engineering Ltd v. P.P.Mundhe) and contended that this Court should not interfere with the proceedings at this stage as the issue is decided at an interlocutory stage and both sides will have full rights to challenge the same at an appropriate stage after the dispute is finally decided by the Labour Court. Learned advocate Shri Clerk has also relied upon orders passed by this Court on 23.9.02 in Special Civil Application No.5127 of 2002 and order dated 1.7.96 passed in Special Civil Application No.4483 of 1996.

4.1. In Special Civil Application No.14016 of 2003, facts shortly stated are that the respondent-workman was working as a Record Clerk with the petitioner Life Insurance Corporation of India ("the Corporation" for short). For certain alleged misconduct involving serious charges of having committed fraud, the petitioner Corporation conducted departmental inquiry against the respondent and on conclusion of the departmental inquiry, passed order of penalty of removing him from service and further order of recovery of Rs.44,975.40 ps. also came to be passed against the respondent. The respondent challenged the said order of the petitioner-Corporation by filing reference (ITC) No.94/98 before the Industrial Tribunal, Ahmedabad. The Industrial Tribunal, Ahmedabad by its order dated 30th April 2003 was pleased to hold and declare that the departmental inquiry conducted by the petitioner Corporation was illegal and consequently, permitted the petitioner to lead further evidence to prove the charges levelled against the respondent. It is this order of 30th April 2003 which is impugned in the present petition.

4.2. Learned advocate Shri A.K.Clerk appearing for the petitioner has submitted that the Industrial Tribunal has committed serious error in holding that the departmental

inquiry conducted by the petitioner Corporation was illegal or that the same was in violation of principles of natural justice. Learned advocate Shri Clerk submits that though the issue decided by the Industrial Tribunal is a preliminary issue and at an interlocutory stage, in the facts of the present case, interference against the order of the Industrial Tribunal is called for. He contends that the Industrial Tribunal has declared the departmental inquiry invalid on three grounds, namely, that the respondent workman was not permitted the assistance of a legal practitioner, that a copy of the report of the preliminary inquiry was not supplied to the respondent and that documents demanded by the respondent-workman were not supplied to him. He submits that none of the grounds on which the Industrial Court has declared the inquiry to be invalid is sustainable. He further submits that in light of the grounds on which the inquiry is declared illegal, there is no scope to lead further evidence to prove the charges and such an opportunity would be an empty formality. He submits that on account of the peculiar facts of the present case, interference is justified even against the order which is passed at an interlocutory stage since the underlying principle is that of avoiding delay in finalisation of the dispute.

4.3. Appearing on behalf of the respondent learned advocate Shri G.M.Joshi submits that in view of the decision of the Hon'ble Supreme Court in the case of Cooper Engineering (supra) no interference is called for in the present petition and there are no peculiar facts involved in the case which would warrant taking a different course. He has pointed out that the decision in the case of Cooper Engineering (supra) has been relied on in the subsequent decision of the Hon'ble Supreme Court reported in AIR 2001 SC 2090 (Karnataka State Road Transport Corpn. v. Lakkshmiddevamma) wherein the issue involved was at what stage does the employer have to exercise his right to adduce additional evidence in justification of the action taken by the employer.

5.1. In Special Civil Application No.7350 of 2004, broadly stated the facts are that the petitioner was working as a Class-IV employee in the respondent Gujarat State Fertilizer Company Ltd ("respondent Company" for short). For certain alleged irregularities, the petitioner was served with chargesheet dated 24.6.92. Upon conclusion of the departmental inquiry initiated pursuant to the chargesheet dated 24.6.92, the respondent Company passed order dated 30th December 1992 dismissing the petitioner from service. The said order of dismissal

dated 30th December 1992 came to be challenged by the petitioner before the Labour Court, Jamnagar. The issue of validity of the departmental inquiry came to be decided by the Labour Court, Jamnagar as a preliminary issue and by order dated 5.12.2003, the Labour Court was pleased to come to the conclusion that the departmental inquiry conducted against the petitioner was in consonance with the principles of natural justice and the same was therefore declared as legal and valid. It is this order of the Labour Court, Jamnagar dated 5.12.2003 that the petitioner has challenged in the present petition.

5.2. Learned advocate Ms.Sejal Sutaria appearing with Mr.V.H.Desai for the petitioner has adopted the arguments of other learned advocates for the petitioners appearing in the petitions mentioned above and submitted that the order of the Labour Court be quashed and set aside.

6. Having noted the factual background of the rival contentions, if one adverts his attention to the legal issue involved in the group of petitions, one finds that the question of law which is required to be considered in the present group of petitions is whether at the interlocutory stage when the Labour Court or the Industrial Tribunal is deciding the question of legality and validity of the departmental inquiry conducted by the employer, interference is permissible and justified in a writ petition filed by the aggrieved party.

7. Discussion of this issue has to start with the decision of the Hon'ble Supreme Court in Cooper Engineering case (supra). In the said decision, the Hon'ble Supreme Court had specifically come to the conclusion that the Labour Court should decide as a preliminary issue whether the domestic inquiry has violated the principles of natural justice and in such a case, there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter if worthy can be agitated even after the final award. Para 22 of the said judgement reads as follows:-

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is

admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

As discussed earlier, the decision in Cooper Engineering (supra) was also relied upon by the Hon'ble Supreme Court in the decision in Karnataka State Road Transport Corporation (supra) with respect to the question regarding the stage at what the employer has to exercise its right to adduce additional evidence in justification of the action taken by the employer.

8. I also find that the learned single Judge of this High Court in a decision reported in 1998 (3) L.L.N. 795 (Dinesh Mills Ltd v. Kedarnath R. Pande) relying on the decision of the Hon'ble Supreme Court in the case of Cooper Engineering (supra) came to the conclusion that interference in exercise of powers under Article 226 and 227 of the Constitution would not be called for against the decision of the Labour Court which as a preliminary issue held that the domestic inquiry conducted by the employer was illegal and improper since either party can ultimately challenge the same after final adjudication of the dispute. I also find that a Division Bench of this High Court also had taken a similar view in the judgment and order dated 17.3.03 passed in Letters Patent Appeal No.655 of 2002 in Special Civil Application No.2510 of 2001. In the said decision, the Division Bench also relying on the decision of the Hon'ble Supreme Court in Cooper Engineering case upheld the order of the learned single Judge refusing to entertain the petition against the interlocutory order passed by the Labour Court regarding the validity of the departmental inquiry conducted by the employer.

9. From the above decisions and in particular from the decision of the Hon'ble Supreme Court in Cooper Engineering (supra), one thing is clear that whenever the Labour Court or the Industrial Tribunal decides the validity of the departmental inquiry conducted by the employer at the interlocutory stage, writ petition challenging the said order would not be maintainable. The Hon'ble Supreme Court in Cooper Engineering (supra) observed that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision which is at a preliminary issue and the same can be agitated even after the final award. The Hon'ble Supreme Court had also observed that it will be legitimate for the High Court to refuse to intervene at that stage. The Hon'ble Supreme Court had also observed that the above observations are made to ensure that there is no undue delay in industrial adjudication.

10. Coming back to the facts of the individual cases, in Special Civil Application No.8754 of 2003, the order under challenge being that of the Industrial Court, deciding the validity of the departmental inquiry being at an interlocutory stage, no interference would be called for. I am unable to accept the contention of the learned advocate Shri Shahani for the petitioner that the petition is required to be entertained since the Industrial Court also was dealing with a revision application of the respondent which in itself was challenging an interlocutory order passed by the Labour Court. Though it may be true that the Industrial Court itself was considering the order passed by the Labour Court at an interlocutory stage and that therefore it would have been desirable if the Industrial Court had not entertained the revision petition, that by itself would not justify the exercise of powers under Article 226 and 227 of the Constitution of India. In the facts of the present case, since the underlying principle is to avoid further delay and to ensure speedy disposal of the industrial dispute, the order of the Industrial Court being at an interlocutory stage, it would be just and proper to refuse to exercise the jurisdiction under Article 226 and 227 of the Constitution of India in view of the above mentioned decisions. One more reason for coming to the said conclusion is that the petitioner had not filed any reply before the Industrial Court in response to the revision application filed by the respondent and even reading the order of the Industrial Court, the above contention does not appear to have been taken by the petitioner during the course of the

arguments also. I am unable to accept the contention of the learned advocate for the petitioner that the Industrial Court in exercise of its powers under section 85 of the Bombay Industrial Relations Act could not have passed the order in question since the Industrial Court enjoys superintending powers over the Labour Courts and that therefore this is not a case of order having been passed without jurisdiction and in view of what is stated hereinabove I am not entertaining the petition on the ground that the order under challenge is an interlocutory order and the legality of the order passed by the Industrial Court is not examined. A somewhat peculiar situation arising in the present petition, however, is that the Industrial Court has by the impugned order already upheld the legality of the departmental inquiry conducted by the respondent though at an interlocutory stage. It is not in dispute that against the final order that may be passed by the Labour Court, appeal would lie to the Industrial Court. If the findings of the Industrial Court in the impugned order are not specified to be of interim nature, in the appeal the same would come in the way of the petitioner, in case ultimately the Labour Court decides the issue against the petitioner. To obviate this difficulty, it is provided that the decision of the Industrial Court under challenge, namely, the order dated 6th December 2001 would not in any manner come in the way of the petitioner in case the Labour Court ultimately decides against the petitioner and the petitioner is required to file appeal before the Industrial Court against the order of the Labour Court. Subject to these observations, I find that the petition is not required to be entertained.

11. Coming to the facts of Special Civil Application No.14016 of 2003, I find that the Industrial Tribunal has decided the legality of the departmental inquiry conducted by the petitioner Corporation as a preliminary issue and at the interlocutory stage, interference by this Court would not be permissible. I do not find any justification to interfere with the order of the Industrial Tribunal at this stage as the issue decided is at an interlocutory stage and any party aggrieved by the final verdict in the main dispute will have ample opportunity to challenge the same before the appropriate Court. I am unable to agree with the contention of the learned advocate for the petitioner Shri Clerk that the peculiar facts of the case would justify interference at this stage. The decision of the Hon'ble Supreme Court in Cooper Engineering (supra) cannot be dissected in such a way and I do not find any warrant or justification in the said decision to hold that if the order of the Labour

Court/Industrial Tribunal while deciding the legality of the departmental inquiry conducted by the employer at an interlocutory stage is defective on certain grounds, this Court would be in a position to interfere with the same. In view of this discussion, I find no merit in the petition and the same is required to be rejected.

12. As far as Special Civil Application No.7350 of 2004 is concerned, in view of the discussion on the position of law as pointed out above, I find that the petition challenges purely an intraocularly order passed by the Labour Court by which the legality of the departmental inquiry conducted by the respondent Company has been decided as a preliminary issue and that therefore no interference can be permissible against the said order in the present petition at this stage. In view of this position, I find no merit in the petition and the same also deserves to be dismissed.

13. In conclusion, I find that all the petitions are required to be rejected. Special Civil Application Nos.8754 of 2003 is rejected subject to the observations made in para 10 of this judgment. Rule is discharged. Special Civil Application No.14016 of 2003 also stands rejected. Rule is discharged. Ad-interim relief granted earlier stands vacated. Special Civil Application No.7350 of 2004 is summarily rejected.

(Akil Kureshi, J.)

14. At this stage, learned advocate for the petitioner appearing in Special Civil Application No.14016 of 2003 requests that the operation of the judgment passed in Special Civil Application No.14016 of 2003 may be stayed for a period of two weeks to enable him to approach the higher forum by filing appeal. The request is granted. Operation of the judgment and order passed in Special Civil Application No.14016 of 2003 shall stand stayed for a period of two weeks from today.

(Akil Kureshi, J.)

4.8.2004.